

Local taxes are triggered when "selling" occurs in a jurisdiction imposing a tax. See 86 Ill. Adm. Code 270.115. (This is a PLR).

May 4, 1999

Dear Mr. Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see enclosed), is in response to your letter of April 1, 1999. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

Based upon the facts as stated below, COMPANY, requests a private letter ruling concerning the correct sales tax rates to collect from our Illinois clients.

COMPANY provides computer services to the insurance and automotive repair industries. Generally our products fall into two categories, information services and software applications. The information service portion of the business is in the form of a database of automotive information which the client can access from our host computer through phone systems. The software applications are estimating systems which are sent to the client on CD-Rom for installation on their own hardware or installed on personal computers owned by COMPANY which are then leased to the client. Monthly updates to the program are sent to clients on CD-Rom. All products are sent by common carrier from locations outside of Illinois. Typically, COMPANY does not install these products at the client's location and most client contact would be in the form of telephone support. Client training may take place at the client's Illinois location or at COMPANY's location in CITY, Illinois.

The corporate offices of COMPANY are located in CITY/STATE. Most senior executives, accounting and technical personnel are located at this office. The company also maintains an office in CITY, Illinois. Personnel at this office include: account executives, sales and training personnel, and clerical staff.

Sales are solicited by advertising, cold calls, trade shows and proposal requests from insurance companies. While sales people may demonstrate a product at the client's location in Illinois, our Illinois location is not a retail location and customers would not

come there to purchase products. Virtually all of our products are on-going in nature and set up with a contract between COMPANY and the Client. While the preprinted, standard contract (Exhibit 1), may be prepared in Illinois and signed by the client at their location, contracts are not considered valid by COMPANY until a senior executive in the CITY/STATE office approves and signs it.

COMPANY is requesting this ruling for future tax collection purposes. We have recently been audited by the State of Illinois. The only audit adjustment was a very small amount of use tax due. A copy of the auditor's final audit letter is attached. It was the auditor's opinion that we should be collecting use tax instead of tax on a destination basis. We request a ruling as to whether COMPANY should be collecting and remitting the state rate only, the state and local rates at our client's locations, or the state and local rate at our Illinois location in CITY.

To the best of my knowledge, COMPANY has not previously submitted this issue, nor has the Illinois Department of Revenue previously ruled on this issue for our company.

Because COMPANY is simply requesting an interpretation of the Illinois Administrative Code based on our specific business circumstances, and is not disputing the Code, we have no statements of authorities either supporting or contrary to our request.

Other than the information that is normally deleted from the private letter rulings there is no specific trade secret information that needs to be deleted from the ruling.

Thank you for responding to this request for a private letter ruling on the correct tax collection by our company in your State. I will look forward to your reply.

Regarding your questions concerning the imposition of local taxes in Illinois, see the enclosed copy of Sec. 270.115 of the Home Rule Municipal Retailers' Occupation Tax concerning jurisdictional questions. Local taxes are triggered when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. The tax rate is fixed by the location of the seller, not the delivery location. The fact that the item being sold is shipped from out-of-State is also immaterial for purposes of local taxes because if the sale occurs in an Illinois jurisdiction imposing a local tax, the local tax will be incurred.

You state that you accept all contracts in CITY/STATE. Our review of your sample contract indicates nothing to the contrary. If purchase orders are accepted in CITY/STATE, as you represent, you will only be required to collect the general 6.25% State rate of Use Tax on your Illinois sales, so long as the property being sold is located outside of Illinois at the time of sale .

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the

May 4, 1999

material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.